



## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105

Via Email

Kevin Austin  
Senior Environmental Engineer  
Newport Fab, LLC  
dba Tower Semiconductor  
4321 Jamboree Road  
Newport Beach, CA 92660  
[kevin.austin@towerjazz.com](mailto:kevin.austin@towerjazz.com)

**RE: Notice of Violation and Request for Information Pursuant to Section 3007(a) of RCRA  
Tower Semiconductor (EPA Identification Number: CAR 000 113 233)**

Dear Kevin Austin:

On September 8, 2021, the United States Environmental Protection Agency (EPA), Region 9, conducted a Compliance Evaluation Inspection (CEI) of the Newport Fab, LLC facility doing business as Tower Semiconductor located at 4321 Jamboree Road, in Newport Beach, CA, EPA Identification CAR 000 113 233. This inspection was conducted under the authority of Section 3007(a) of the Resource Conservation and Recovery Act (RCRA), as amended, 42 U.S.C. § 6927(a).

A copy of the RCRA CEI report is enclosed for your information and response. The RCRA CEI report identifies potential violations of RCRA and Tower Semiconductor's RCRA authorized hazardous waste management requirements observed during EPA's investigation. Please note that omissions in the RCRA CEI report shall not be construed as a determination of compliance with any other applicable regulation.

Pursuant to Section 3008 of RCRA, 42 U.S.C. § 6928, and violations of RCRA hazardous waste management requirements, such as those identified in the enclosed RCRA CEI report, may be punishable by civil penalties of up to \$76,764 per day for each day such violations continue. You are hereby required to submit documentation that you have corrected each of the potential violations identified in the enclosed RCRA CEI report within **thirty (30) calendar days** of your receipt of this letter. Please also send your response via email to Chris Rollins at [rollins.christopher@epa.gov](mailto:rollins.christopher@epa.gov). Documentation may consist of, among other things, photographs, manifests, and revised records.

### **Confidential Business Information**

EPA regulations governing the confidentiality of business information are set forth in 40 C.F.R. Part 2, Subpart B. EPA routinely provides copies of investigation reports to state agencies, and upon request, to the public. Such releases are handled according to the Freedom of Information Act regulations (40

C.F.R. Part 2). If Tower Semiconductor believes the enclosed RCRA CEI report contains information entitled to treatment as confidential business information (CBI), please assert a confidentiality claim in accordance with 40 C.F.R. § 2.203(b) within fourteen (14) calendar days from the date of receipt of this letter. Business confidentiality includes the concept of trade secrecy and other related concepts. Your claim must specifically identify the information covered by the claim and should be sent to EPA electronically. Please note if your claim or submission contains CBI, then Tower Semiconductor should use an FTP site or other file sharing programs to transmit the CBI contents. EPA will construe the failure to furnish a confidentiality claim within fourteen (14) calendar days from the date of Tower Semiconductor's receipt of this letter as a waiver of that claim and information may be made available to the public by the EPA without further notice. See 40 C.F.R. § 2.203(a)(2).

Additionally, if Tower Semiconductor believes that any information in Tower Semiconductor's response to this Request for Information letter is entitled to treatment as CBI, please identify any such information and assert a confidentiality claim in accordance with 40 C.F.R. § 2.203(b) in Tower Semiconductor's response. EPA will construe the failure to make a confidentiality claim when the response is submitted to EPA as a waiver of that claim and information may be made available to the public by the EPA without further notice.

If EPA determines that any information over which Tower Semiconductor asserts a claim meets the criteria set forth in 40 C.F.R. § 2.208, the information will be disclosed only to the extent, and by means of the procedures specified in 40 C.F.R. Part 2, Subpart B.

### **Request for Information**

Pursuant to EPA's authority under Section 3007(a) of RCRA, 42 U.S.C. § 6927(a), Tower Semiconductor is requested to submit to EPA the information and documents requested in Attachment I of this letter using the instructions included in Attachment II. Also, complete and submit the certification included in Attachment III.

Failure to respond fully and truthfully may result in an enforcement action by EPA pursuant to Section 3008(g) of RCRA (42 U.S.C. § 6928(g)). These statutory provisions authorize EPA to seek the imposition of penalties of up to \$76,764 per day of noncompliance. Please be further advised that provision of false, fictitious or fraudulent statements or representations may subject you to criminal penalties under 18 U.S.C. § 1001. The information you provide may be used by EPA in administrative, civil or criminal proceedings.

This Request for Information is not subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act because it is not a collection of information within the meaning of 44 U.S.C. §§ 3502(3), 3507, and 3512. *See, also*, 5 C.F.R. §§ 1320.3(c), 1320.5, and 1320.6(a). Furthermore, it is exempt from OMB review under the Paperwork Reduction Act because it is part of an investigation of a specific individual or entity. 44 U.S.C. § 3518(c)(1); 5 C.F.R. § 1320.4.

Your response to this Request for Information must be made by letter, signed by a duly authorized official, and submitted to the EPA within thirty (30) calendar days from the date of your receipt of this letter.

Please address the submittal to:

Christopher Rollins  
Mailcode: ENF-2-2  
Hazardous Waste and Chemical Section  
Enforcement and Compliance Assurance Division  
U.S. Environmental Protection Agency  
San Francisco, CA 94105  
e-mail: [rollins.christopher@epa.gov](mailto:rollins.christopher@epa.gov)

In lieu of submitting the requested response by mail, Tower Semiconductor may submit the response electronically as portable document files via email, unless the response contains CBI. CBI submissions must be provided to EPA using a secure electronic FTP site or other file sharing program.

By copy of this letter, EPA is providing DTSC with notice of the referenced violations of RCRA Subtitle C and any non-RCRA state violations.

You may have been provided during the inspection with a Small Business Regulatory Enforcement and Fairness Act (SBREFA) Information Sheet. If not, please see <https://www.epa.gov/sites/production/files/2017-06/documents/smallbusinessinfo.pdf>. The Information Sheet is designed to provide information on compliance assistance and inform small businesses of their rights to comment to the SBREFA Ombudsman concerning EPA enforcement activities. Be aware that SBREFA does not eliminate your responsibilities to respond to this letter within the allowed time nor does it create any new rights or defenses under the law.

If you have any questions regarding this letter, please contact Christopher Rollins of my staff at (415) 947-4166.

Sincerely,

Kaoru Morimoto  
Manager, Hazardous Waste and Chemical Section  
Enforcement and Compliance Assurance Division

Enclosures

cc:

Kristine Green, DTSC; [kristine.green@dtsc.ca.gov](mailto:kristine.green@dtsc.ca.gov)  
Marco Escobedo, OC Health Care Agency; [mescobedo@ochca.com](mailto:mescobedo@ochca.com)

## ATTACHMENT I

Therefore, pursuant to EPA's authority under Section 3007(a) of RCRA, Tower Semiconductor is requested to submit to EPA the following information:

1. Please provide EPA with evidence that the dented black 55-gallon container of waste solvents observed in Tower Semiconductor's Fab 6 Support Area and stored in Semco Unit 1 was replaced or properly disposed.
2. Please update Tower Semiconductor's Operating Plan to include the test methods and procedures listed under 22 CCR § 66265.1063 [40 CFR § 265.1063].
3. Please provide EPA with a detailed written description regarding how Tower Semiconductor manages the air emissions from the Solvent Waste Collection Tank (SWCT) including any associated detailed schematics or diagrams. In addition, EPA is aware that the emergency vent for Tower Semiconductor's SWCT has a rupture disk installed in case of high-pressure conditions. What are the pounds per square inch associated with breaking the rupture disk in case of an emergency?
4. Tower Semiconductor does not appear to have determined the maximum organic vapor pressure calculations for RCRA hazardous waste to be managed in the facility's SWCT using Tank Level 1 controls before hazardous waste was placed in the tank. Please determine the maximum organic vapor pressure allowed for the facility's SWCT, using the procedures specified in section 22 CCR § 66265.1084(c) [40 CFR § 265.1084(c)] of RCRA, update Tower Semiconductor's Operating Plan to include these calculations and provide a copy of these detailed calculations to EPA Region 9 for its records.

## ATTACHMENT II INSTRUCTIONS

In responding to this Request for Information, apply the following instructions and definitions:

1. Answer Every Question Completely. A separate response must be made to each of the questions set forth in this Information Request. For each question contained in this letter, if information responsive to this Information Request is not in your possession, custody, or control, please identify the person(s) from whom such information may be obtained.
2. Number Each Answer. When answering the questions in Attachment I, please precede each answer with the corresponding number of the question and subpart to which it responds.
3. Number Each Document. For each document produced in response to this Information Request, indicate on the document, or in some other reasonable manner, the number of the question to which it corresponds.
4. Provide the Best Information Available. Provide responses to the best of Respondent's ability, even if the information sought was never put down in writing or if the written documents are no longer available. You should seek out responsive information from current and former employees/agents, if necessary. If you are unable to answer a request in a detailed and complete manner or if you are unable to provide any of the information or documents requested, indicate the reason for your inability to do so. If you have reason to believe that there is an individual who may be able to provide more detail or documentation in response to any request, state that person's name and last known address and phone number and the reasons for your belief.

If anything is deleted from a document produced in response to this Request for Information, state the reason for and the subject matter of the deletion. If a document/information is requested but is not available, state the reason for its unavailability. In addition, identify any such document by author, date, subject matter, number of pages, and all recipients and their addresses.

5. Identify Sources of Answer. For each question, identify all the persons and documents that you relied on in producing your answer.
6. Continuing Obligation to Provide/Correct Information. If additional information or documents responsive to this Information Request become known or available to you after you respond to this Information Request, EPA hereby requests that you supplement your response to EPA.
7. Scope of Request. The scope of this request includes all information and documents independently developed or obtained by research on the part of your company, its attorneys, consultants or any of their agents, consultants or employees.
8. Have an Authorized Person Sign the Response and Certification (Attachment III). The signatory must be an officer or agent who is authorized to respond on behalf of the company or facility.
9. Confidential Information. The information requested herein must be provided even though you

may contend that it includes confidential information or trade secrets. You may assert a confidentiality claim covering part or all of the information requested, pursuant to Section 3007(b) of RCRA, 42 U.S.C. § 6927(b), and 40 C.F.R. § 2.203(b).

If you make a claim of confidentiality for any of the information you submit to EPA, you must prove that claim. For each document or response you claim confidential, you must separately address the following points:

- i. clearly identify the portions of the information alleged to be entitled to confidential treatment;
- ii. the period of time for which confidential treatment is desired (e.g., until a certain date, until the occurrence of a specific event, or permanently);
- iii. measures taken by you to guard against the undesired disclosure of the information to others;
- iv. the extent to which the information has been disclosed to others, and the precautions taken in connection therewith;
- v. pertinent confidentiality determinations, if any, by EPA or other federal agencies, and a copy of any such determinations or reference to them, if available; and
- vi. whether you assert that disclosure of the information would likely result in substantial harmful effects on your business' competitive position, and if so, what those harmful effects would be, why they should be viewed as substantial, and an explanation of the causal relationship between disclosure and such harmful effects. *Note: You are not required to respond to this question in light of the Supreme Court's decision in Food Marketing Institute v. Argus Leader Media, No. 18-481 (U.S. Supreme Court, June 24, 2019). As a result of that decision, EPA will not consider whether there is substantial competitive harm in evaluating your CBI claim.*

To make a confidentiality claim, please stamp, or type, confidential on all confidential responses and any related confidential documents. Confidential portions of otherwise nonconfidential documents should be clearly identified. You should indicate the date, if any, after which the information need no longer be treated as confidential. Please submit your confidential responses electronically using an FTP site or other file sharing programs, so that all nonconfidential information, including any redacted versions of documents are in one folder and all materials for which you desire confidential treatment are in another folder that is clearly marked confidential.

All confidentiality claims are subject to EPA verification. It is important that you satisfactorily show that you have taken reasonable measures to protect the confidentiality of the information and that you intend to continue to do so, and that it is not and has not been obtainable by legitimate means without your consent. If no such claim accompanies the information when it is received by EPA, then it may be made available to the public by EPA without further notice to you.

If the EPA determines that the information so designated meets the criteria set forth in 40 C.F.R. § 2.208, the information will be disclosed only to the extent, and by means of the procedures specified in 40 C.F.R. Part 2, Subpart B.



**ATTACHMENT III**  
**CERTIFICATION OF ANSWERS TO RESPONSES TO REQUEST FOR INFORMATION**

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document (response to EPA Request for Information) and all documents submitted herewith, that the submitted information is true, accurate and complete, and that all documents submitted herewith are complete and authentic, unless otherwise indicated. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

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NAME (print or type)

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TITLE (print or type)

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SIGNATURE

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DATE